



**Virginia  
Regulatory  
Town Hall**

**Notice of Intended Regulatory Action  
Agency Background Document**

<b>Agency Name:</b>	Board of Nursing, Department of Health Professions
<b>VAC Chapter Number:</b>	18 VAC 90-20-10 et seq.
<b>Regulation Title:</b>	Regulations Governing the Practice of Nursing
<b>Action Title:</b>	Advanced certification for certified nurse aides
<b>Date:</b>	

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

**Purpose**

*Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.*

The Board of Nursing is mandated by Chapter 448 of the 2001 Acts of the Assembly to promulgate regulations to establish a career advancement certification for certified nurse aides. As was stated in House Bill 1778, the purpose is “to establish a career advancement certification that will indicate enhanced competence in patient care tasks and enable certified nurse aides to expand the scope of the responsibilities and duties delegated to them.”

**Basis**

*Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.*

**18 VAC 90-20-10 et seq. Regulations Governing the Practice of Nursing** were promulgated under the general authority of Title 54.1 of the Code of Virginia.

**Chapter 24** establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations.

*§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:*

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
- 8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
- 9. To take appropriate disciplinary action for violations of applicable law and regulations.*
- 10. To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is*

*received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*

11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

**The specific statutory mandate for the Board to establish an advanced certification for nurse aides is found in:**

§ [54.1-3025.1](#). *Advanced certification; renewal.*

*A. The Board shall develop and promulgate regulations to establish a career advancement certification that will indicate enhanced competence in patient care tasks and enable certified nurse aides to expand the scope of the responsibilities and duties delegated to them. An advanced certificate shall be awarded upon successful completion of the required educational and training standards set by the Board. Each institution that desires to conduct programs to provide training for such advanced certificates shall be approved by the Board pursuant to § [54.1-3005](#).*

*B. An advanced certificate issued to a certified nurse aide shall be renewed biennially upon payment of any specified fee. The certified nurse aide shall submit proof of compliance with any requirements of law and regulation concerning competence as established by the Board.*

## Substance

*Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.*

The Board has not determined the exact nature of the regulatory action to be taken, but based on discussions held during the consideration of enabling legislation it is likely that the Board will adopt a model similar to the advanced certification available in North Carolina (see synopsis of program below). The Board will consider the comments it receives from interested parties as a

result of publication of the Notice of Intended Regulatory Action to determine the appropriate regulatory action.

Since it is likely that additional responsibilities may be delegated to nurse aides with advanced certification, the Board will need to adopt requirements for education and training that are reasonably attainable but sufficiently rigorous to assure minimal competency of individuals working with a very vulnerable, frail population. Therefore, amended regulations will establish criteria for advanced certification in order to protect the health, safety and welfare of the public.

## Alternatives

*Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.*

Following introduction of HB 1778, the Board worked with representatives of the long term care industry to discuss alternatives and ideas for implementation of “career ladders” for certified nurse aides (CNA). Initially, the legislation contemplated multiple certifications in specialty skill areas, beyond that of the basic CNA. Examples of these advanced certifications might include: wound care, dementia, and rehabilitation. Information was provided indicating this model is used in Tennessee in the private sector, but the group was unaware of any other state regulatory authority that uses this model. Concerns were also expressed that the cost of the program using the model with a variety of advanced certifications based on specialized skill areas would be prohibitive. It may also be confusing to the public and less useful to employers.

Alternatively, the group discussed the option of a single advanced certification, beyond the basic CNA, which would include training modules for a variety of specialized tasks beyond the basic CNA scope of practice. An example of this might be a “C.N.A. II” certification. Information gathered thus far indicates only one state (North Carolina) offers advanced certification for CNA’s, based on a 160-hour additional training. Representatives from the industry indicated the single advanced certification would facilitate a higher quality of care, make the certificate holder more marketable, and be more useful and attractive to employers in the marketplace.

### **North Carolina Certified Nurse Aide II Program**

In North Carolina, a CNA is required to hold current, active certification as a CNA I in order to obtain and maintain a CNA II. An approved CNA II training program requires a minimum of 80 classroom hours and 80 clinical hours. A standard curriculum developed by the N.C. Board of Nursing must be used. No on-site review is conducted for approval of these programs, but an annual paper review is done. Competency testing is not standardized, but required by each training program.

An application for CNA II is \$12 (which includes a one year certification). After first year of certification, renewal is every two years with a biennial renewal fee is \$24. In addition, there is a renewal requirement is that CNA II work in patient care at least 8 hours during the biennial renewal cycle. Costs for the CNA certification and renewal will likely be different in Virginia

because there are less than half the number of certified nurse aides. Since NC requires all nurse aides working in any practice setting to be certified, there are approximately 85,000 current, active CNA I's. In Virginia, a requirement for certification is limited to employment in long-term care, so there are approximately 34,000 nurse aides holding certification. In NC, there are only approximately 11,570 persons who hold a current, active CNA II certification or 13% of the total. If 13% of those certified in Virginia obtained the advanced certification, there would eventually be approximately 4,400 persons so certified. Cost for the program, including Board approval of education and training, review of applications, and renewals would be borne by those individuals.

### Family Impact Statement

*Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

The proposed regulatory action would not strengthen or erode the authority and rights of parents or strengthen or erode the marital commitment. If employers provide additional compensation to certified nurse aides who hold an advanced certification, the amended rule could potentially result in an increase in disposable family income and have the effect of encouraging economic self-sufficiency and assumption of responsibility.